

Lacey

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
NEW AMERICAN SHIPPING)
CORPORATION, INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 77-101

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

PER W. A. GISSBERG:

The formal hearing on the appeal of New American Shipping Corporation, Inc. by and through its agent, Eckert Overseas Agency, Inc., to a notice of civil penalty of \$250 for an alleged smoke emission violation came on before Board members W. A. Gissberg (Chairman and presiding) and Dave J. Mooney on September 23, 1977 in Lacey, Washington.

Appellant appeared by and through its agent, Alan Liu of Eckert Overseas Agency, Inc.; respondent appeared through its attorney, Keith D. McGoffin.

1 Having heard the testimony and considered the exhibits, and being
2 fully advised, the Board makes the following

3 FINDINGS OF FACT

4 I

5 Respondent, pursuant to RCW 43.21B.260, has filed with this Board a
6 certified copy of its Regulation I containing respondent's regulations and
7 amendments thereto.

8 II

9 On June 15, 1977, the ship, LIBERIAN STATESMAN, while anchored in
10 Elliott Bay in Seattle, Washington and undergoing repairs to damage
11 suffered at sea, emitted black smoke from its stack for six consecutive
12 minutes which was darker in shade than that designated as No. 1 (20%
13 density) on the Ringelmann Chart, namely, a Ringelmann 4. The smoke was
14 caused by the sudden necessity of having to start a spare diesel
15 generator as a consequence of its regular generator having broken down.
16 Although the crew of the ship was aware of the upset smoke condition,
17 the captain did not notify its onshore agent or the Puget Sound Air
18 Pollution Control Agency because of the ship's apparent inability to
19 communicate such fact. No ship-to-shore radio was onboard but the ship
20 could have communicated with onshore stations by use of its VHF radio.

21 The ship's agent, Eckert Overseas Agency, Inc., was aware of the
22 provisions of Section 9.03 of respondent's Regulation I and the provisions
23 of Section 9.16 of such regulation. The ship's captain had been given
24 a copy of such regulations by the agent.

25 III

26 As a result of the emission incident, respondent caused its notice
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 2

1 of violation and notice and order of civil penalty in the amount of \$250
2 to be mailed by certified mail to the ship's owner through the agent,
3 which notices cited a violation of Section 9.03(b) of Regulation I of
4 respondent.

5 Section 9.03(b)(1) makes it unlawful to cause or allow the
6 emission of an air contaminant darker in shade than that designated as
7 No. 1 (20% density) on the Ringelmann Chart, for more three minutes in
8 any one hour.

9 IV

10 Section 9.16 of respondent's Regulation I, under certain circumstances
11 excuses what would otherwise be a violation of respondent's smoke emission
12 regulations when the emissions are "a direct result of start-ups, periodic
13 shutdown, or unavoidable and unforeseeable failure or breakdown" if
14 certain requirements are met, i.e., paragraph

15 . . .
16 (1) The owner or operator of such . . . equipment shall
17 immediately notify the Agency of such occurrence, together
18 with the pertinent facts relating thereto regarding nature
19 of problem as well as time, date, duration and anticipated
20 influence on emissions from the source.

21 Respondent received no such report from appellant nor was there any
22 apparent effort of the ship to immediately communicate with the shore.

23 V

24 Any Conclusion of Law hereinafter stated which may be deemed a
25 Finding of Fact is hereby adopted as such.

26 From these Findings the Board comes to these

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 CONCLUSIONS OF LAW

2 I

3 Appellant violated Section 9.03(b)(1) of respondent's Regulation I.
4 In order that one who violates respondent's emission regulations can be
5 exculpated therefrom, respondent's regulation requires that it be
6 immediately notified of such occurrence. It is admitted that the agency
7 was not immediately notified. Therefore, the provisions of Section 9.16
8 are not available to appellant to excuse the violation.

9 II

10 Any Finding of Fact which should be deemed a Conclusion of Law is
11 hereby adopted as such.

12 Therefore, the Pollution Control Hearings Board issues this

13 ORDER

14 The notice of violation and imposition of the civil penalty is
15 affirmed.

16 DATED this 27th day of September, 1977.

17 POLLUTION CONTROL HEARINGS BOARD

18 W. A. Gissberg
19 W. A. GISSBERG, Chairman

20 Dave J. Mooney
21 DAVE J. MOONEY, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER